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TERIX COMPUTER COMPANY, INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 ORACLE AMERICA, INC., a Delaware
corporation; ORACLE INTERNATIONAL
15 CORPORATION, a California corporation,

16 Plaintiffs,

17 v.

18 BERND APPLEBY; JAMES OLDING;
TERIX COMPUTER COMPANY, INC., a
19 California corporation; TUSA, INC., a
Delaware corporation; ERMINE IP, INC., a
20 Delaware corporation; and ERMINE
SERVICES, LLC, a Delaware company; and
21 DOES 1—50,

22 Defendants.

Case No. 3:16-cv-02090-JST

**TERIX COMPUTER COMPANY, INC.'S
ANSWER TO FIRST AMENDED
COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF (THIRD CLAIM FOR
RELIEF - FRAUDULENT TRANSFER)**

DEMAND FOR JURY TRIAL

TERiX COMPUTER COMPANY, INC. (“TERiX”) hereby answers the Third Claim for Relief for Fraudulent Transfer from the First Amended Complaint for Damages and Injunctive Relief (the “FAC”) of ORACLE AMERICA, INC. (“Oracle America”) and ORACLE INTERNATIONAL CORP. (“OIC”, collectively with Oracle America, “Oracle”) as follows:

INTRODUCTION

1. In response to Paragraph 1 of the FAC, TERiX admits that TERiX's Chief Executive Officer and Chief Operating Officer were the principals of TERiX. Except as expressly admitted herein, TERiX denies each and every allegation contained in Paragraph 1 of the FAC.

2. In response to Paragraph 2 of the FAC, TERiX denies each and every allegation contained in Paragraph 2 of the FAC.

3. In response to Paragraph 3 of the FAC, TERiX admits that: (i) Oracle sued TERiX in July 2013 for copyright infringement and other claims for relief in the action known as *Oracle America, Inc. v. Terix Computer Company, Inc., et al.*, USDC, Case No. 3:13-cv-03385-JST (“TERiX 1”), and (ii) TERiX stipulated to a judgment in TERiX I entered June 10, 2015 which judgment in all respects speaks for itself. Except as expressly admitted herein, TERiX denies each and every allegation contained in Paragraph 3 of the FAC.

4. In response to Paragraph 4 of the FAC, TERiX denies each and every allegation contained in Paragraph 4 of the FAC.

5. In response to Paragraph 5 of the FAC, TERiX lacks knowledge or information sufficient to admit or deny the allegations regarding Oracle's alleged reasons for bringing this action and, on that ground, denies such allegations. Except as expressly alleged on information and belief herein, TERiX denies each and every allegation contained in Paragraph 5 of the FAC.

THE PARTIES

6. In response to Paragraph 6 of the FAC, TERiX admits that: (i) Oracle America, and/or one or more of its affiliates is a corporation doing business in California; and (ii) Oracle America and/or one or more of its affiliates licenses software and sells support and consulting services. Except as expressly admitted herein, TERiX lacks knowledge and information

1 sufficient to admit or deny the allegations contained in Paragraph 6 and, on that ground, denies
2 such allegations.

3 7. In response to Paragraph 7 of the FAC, TERiX admits that: (i) OIC and/or one or
4 more of its affiliates is a corporation doing business in California; and (ii) OIC and/or one or
5 more of its affiliates licenses software and sells support and consulting services. Except as
6 expressly admitted herein, TERiX lacks knowledge and information sufficient to admit or deny
7 the allegations contained in Paragraph 7 and, on that ground, denies such allegations.

8 8. In response to Paragraph 8 of the FAC, TERiX admits that TERiX is a California
9 corporation which provided computer hardware support. Except as expressly admitted herein,
10 TERiX denies each and every allegation contained in Paragraph 8 of the FAC.

11 9. In response to Paragraph 9 of the FAC, TERiX admits that TUSA, Inc. (“TUSA”),
12 Ermine IP, Inc. (“Ermine IP”) and Ermine Services, LLC (“Ermine Services,” collectively TUSA
13 and Ermine IP, the “TUSA Defendants”) are Delaware corporations with their principal place of
14 business in Sunnyvale, California. Except as expressly admitted herein, TERiX denies each and
15 every allegation contained in Paragraph 9 of the FAC.

16 10. In response to Paragraph 10 of the FAC, TERiX admits the allegations of
17 Paragraph 10 of the FAC.

18 11. In response to Paragraph 11 of the FAC, TERiX admits the allegations of
19 Paragraph 11 of the FAC.

20 12. In response to Paragraph 12 of the FAC, TERiX lacks knowledge and information
21 sufficient to admit or deny the allegations contained in Paragraph 12 and, on that ground, denies
22 such allegations.

23 13. In response to Paragraph 13 of the FAC, TERiX admits that: (i) the Court has
24 personal jurisdiction over the TUSA Defendants, and (ii) Appleby’s principal place of residence
25 is in California. Except as expressly admitted herein, TERiX lacks knowledge and information
26 sufficient to admit or deny the allegations contained in Paragraph 13 and, on that ground, denies
27 such allegations.

14. In response to Paragraph 14 of the FAC, TERiX denies each and every allegation contained in Paragraph 14 of the FAC.

JURISDICTION

15. In response to Paragraph 15 of the FAC, TERiX does not believe that an answer is required to this paragraph because this paragraph states legal conclusions only. However, to the extent that an answer is required, TERiX lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 15 and, on that ground, denies such allegations.

16. In response to Paragraph 16 of the FAC, TERiX does not believe that an answer is required to this paragraph because this paragraph states legal conclusions only. However, to the extent that an answer is required, TERiX lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 16 and, on that ground, denies such allegations.

17. In response to Paragraph 17 of the FAC, TERiX does not believe that an answer is required to this paragraph because this paragraph states legal conclusions only. However, to the extent that an answer is required, TERiX lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 17 and, on that ground, denies such allegations.

VENUE

18. In response to Paragraph 18 of the FAC, TERiX denies that: (i) TERiX committed any wrongful intentional acts; (ii) TERiX caused any harm to Oracle, (iii) TERiX is amenable to personal jurisdiction in this District. Except as expressly alleged herein, TERiX lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 18 and, on that ground, denies such allegations.

INTRADISTRICT ASSIGNMENT

19. In response to Paragraph 19 of the FAC, TERiX does not believe that an answer is required to this paragraph because this paragraph states legal conclusions only. However, to the extent that an answer is required, TERiX lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 19 and, on that ground, denies such allegations.

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FACTUAL ALLEGATIONS

A. Oracle's Computer Systems and Computer Materials

20. In response to Paragraph 20 of the FAC, TERiX admits that: (i) Oracle is a supplier of enterprise hardware and software systems and of related technical support and consulting services for those systems, and (ii) Oracle offers annual support contracts to users of enterprise hardware and software systems. Except as expressly admitted herein, TERiX lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 20 and, on that ground, denies such allegations.

21. In response to Paragraph 21 of the FAC, TERiX lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 21 and, on that ground, denies such allegations.

22. In response to Paragraph 22 of the FAC, TERiX admits that Oracle offers technical support services for its hardware systems, including the Solaris operating system. Except as expressly admitted herein, TERiX denies each and every allegation contained in Paragraph 22 of the FAC.

23. In response to Paragraph 23 of the FAC, TERiX lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 23 and, on that ground, denies such allegations.

24. In response to Paragraph 24 of the FAC, TERiX lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 24 and, on that ground, denies such allegations.

B. Appleby and Olding's Illegal Scheme

25. In response to Paragraph 25 of the FAC, TERiX admits that the quotation set forth in the first sentence at one time appeared on a website maintained by TERiX. Except as expressly admitted herein, TERiX denies each and every allegation contained in Paragraph 25 of the FAC.

26. In response to Paragraph 26 of the FAC, TERiX denies each and every allegation contained in Paragraph 26 of the FAC.

1 27. In response to Paragraph 27 of the FAC, TERiX denies each and every allegation
2 contained in Paragraph 27 of the FAC.

3 28. In response to Paragraph 28 of the FAC, TERiX denies each and every allegation
4 contained in Paragraph 28 of the FAC.

5 29. In response to Paragraph 29 of the FAC, TERiX denies each and every allegation
6 contained in Paragraph 29 of the FAC.

7 30. In response to Paragraph 30 of the FAC, TERiX denies each and every allegation
8 contained in Paragraph 30 of the FAC.

9 31. In response to Paragraph 31 of the FAC, TERiX denies each and every allegation
10 contained in Paragraph 31 of the FAC.

11 32. In response to Paragraph 32 of the FAC, TERiX denies each and every allegation
12 contained in Paragraph 32 of the FAC.

13 33. In response to Paragraph 33 of the FAC, TERiX denies each and every allegation
14 contained in Paragraph 33 of the FAC.

15 34. In response to Paragraph 34 of the FAC, TERiX denies each and every allegation
16 contained in Paragraph 34 of the FAC.

17 35. In response to Paragraph 35 of the FAC, TERiX denies each and every allegation
18 contained in Paragraph 35 of the FAC.

19 36. In response to Paragraph 36 of the FAC, TERiX denies each and every allegation
20 contained in Paragraph 36 of the FAC.

21 37. In response to Paragraph 37 of the FAC, TERiX denies each and every allegation
22 contained in Paragraph 37 of the FAC.

23 38. In response to Paragraph 38 of the FAC, TERiX denies each and every allegation
24 contained in Paragraph 38 of the FAC.

25 39. In response to Paragraph 39 of the FAC, TERiX denies each and every allegation
26 contained in Paragraph 39 of the FAC.

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1 **C. The TERiX Lawsuit and the Federal Judgment**

2 40. In response to Paragraph 40 of the FAC, TERiX admits that Oracle sued TERiX,
3 Sevanna Financial, Inc. (“Sevanna”) and West Coast Computer Exchange, Inc. (“WEX”) in July
4 2013 for copyright infringement and other claims for relief in TERiX I. Except as expressly
5 admitted herein, TERiX denies each and every allegation contained in Paragraph 40 of the FAC.

6 41. In response to Paragraph 41 of the FAC, TERiX admits that TERiX, Sevanna and
7 WEX stipulated to a judgment in TERiX I entered June 10, 2015 which in all respects speaks for
8 itself. Except as expressly admitted herein, TERiX denies each and every allegation contained in
9 Paragraph 41 of the FAC.

10 42. In response to Paragraph 42 of the FAC, TERiX denies each and every allegation
11 contained in Paragraph 42 of the FAC.

12 **D. The Fraudulent Conveyance**

13 43. In response to Paragraph 43 of the FAC, TERiX admits that: (i) Ermine IP was
14 incorporated in the State of Delaware on March 19, 2015, (ii) Appleby is the President, Chief
15 Financial Officer and Chief Executive Officer of Ermine IP, (iii) Olding is the Secretary of
16 Ermine IP, (iv) TUSA was incorporated in the State of Delaware on March 19, 2015, (v) Appleby
17 is the President, Chief Financial Officer and Chief Executive Officer of Ermine IP, (vi) Olding is
18 the Secretary of TUSA, (vii) Ermine Services was incorporated in the State of Delaware on April
19 2, 2015, and (viii) Appleby is the Chief Executive Officer of Ermine Services. Except as
20 expressly admitted herein, TERiX denies each and every allegation contained in Paragraph 43 of
21 the FAC.

22 44. In response to Paragraph 44 of the FAC, TERiX admits that TERiX made the
23 initial payment of \$300,000 that was due upon execution of the stipulated judgment and
24 settlement agreement. Except as expressly admitted herein, TERiX denies each and every
25 allegation contained in Paragraph 44 of the FAC.

26 45. In response to Paragraph 45 of the FAC, TERiX admits that TERiX’s counsel sent
27 a letter to Oracle’s counsel dated February 16, 2016 which in all respects speaks for itself. Except
28

1 as expressly admitted herein, TERiX denies each and every allegation contained in Paragraph 45
2 of the FAC.

3 46. In response to Paragraph 46 of the FAC, TERiX denies each and every allegation
4 contained in Paragraph 46 of the FAC.

5 47. In response to Paragraph 47 of the FAC, TERiX denies each and every allegation
6 contained in Paragraph 47 of the FAC.

7 48. In response to Paragraph 48 of the FAC, TERiX admits the existence of a General
8 Assignment and the existence of an Asset Purchase Agreement, which documents in all respects
9 speak for themselves. Except as expressly admitted herein, TERiX denies each and every
10 allegation contained in Paragraph 48 of the FAC.

11 49. In response to Paragraph 49 of the FAC, TERiX denies each and every allegation
12 contained in Paragraph 49 of the FAC.

13 50. In response to Paragraph 50 of the FAC, TERiX denies each and every allegation
14 contained in Paragraph 50 of the FAC.

15 51. In response to Paragraph 51 of the FAC, TERiX denies each and every allegation
16 contained in Paragraph 51 of the FAC.

17 52. In response to Paragraph 52 of the FAC, TERiX denies each and every allegation
18 contained in Paragraph 52 of the FAC.

19 53. In response to Paragraph 52 of the FAC, TERiX admits that the TUSA Defendants
20 are operating businesses and that one or more of them maintain the website known as
21 www.terix.com. Except as expressly admitted herein, TERiX denies each and every allegation
22 contained in Paragraph 53 of the FAC.

23 54. In response to Paragraph 54 of the FAC, TERiX denies each and every allegation
24 contained in Paragraph 54 of the FAC.

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First Claim for Relief

(Against Appleby and Olding)

Copyright Infringement – Vicarious and Contributory Liability

55. In response to Paragraph 55 of the FAC, TERiX realleges and incorporates herein its responses to Paragraphs 1 through 54 above as though set forth fully herein.

56. In response to Paragraph 56 of the FAC, TERiX asserts that no response to Paragraph 56 is required.

57. In response to Paragraph 57 of the FAC, TERiX asserts that no response to Paragraph 57 is required.

58. In response to Paragraph 58 of the FAC, TERiX asserts that no response to Paragraph 58 is required.

59. In response to Paragraph 59 of the FAC, TERiX asserts that no response to Paragraph 59 is required.

60. In response to Paragraph 60 of the FAC, TERiX asserts that no response to Paragraph 60 is required.

61. In response to Paragraph 61 of the FAC, TERiX asserts that no response to Paragraph 61 is required.

62. In response to Paragraph 62 of the FAC, TERiX asserts that no response to Paragraph 62 is required.

63. In response to Paragraph 63 of the FAC, TERiX asserts that no response to Paragraph 63 is required.

64. In response to Paragraph 64 of the FAC, TERiX asserts that no response to Paragraph 64 is required.

65. In response to Paragraph 65 of the FAC, TERiX asserts that no response to Paragraph 65 is required.

66. In response to Paragraph 66 of the FAC, TERiX asserts that no response to Paragraph 66 is required.

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Second Claim for Relief

(Appleby and Olding)

Alter Ego Liability

67. In response to Paragraph 67 of the FAC, TERiX realleges and incorporates herein its responses to Paragraphs 1 through 66 above as though set forth fully herein.

68. In response to Paragraph 68 of the FAC, TERiX asserts that no response to Paragraph 68 is required.

69. In response to Paragraph 69 of the FAC, TERiX asserts that no response to Paragraph 69 is required.

70. In response to Paragraph 70 of the FAC, TERiX asserts that no response to Paragraph 70 is required.

71. In response to Paragraph 71 of the FAC, TERiX asserts that no response to Paragraph 71 is required.

72. In response to Paragraph 72 of the FAC, TERiX asserts that no response to Paragraph 72 is required.

73. In response to Paragraph 73 of the FAC, TERiX asserts that no response to Paragraph 73 is required.

74. In response to Paragraph 74 of the FAC, TERiX asserts that no response to Paragraph 74 is required.

75. In response to Paragraph 75 of the FAC, TERiX asserts that no response to Paragraph 75 is required.

76. In response to Paragraph 76 of the FAC, TERiX asserts that no response to Paragraph 76 is required.

Third Claim for Relief

(All Defendants)

Fraudulent Transfer - Cal. Civil Code § 3439, *et seq.*

77. In response to Paragraph 77 of the FAC, TERiX realleges and incorporates herein its responses to Paragraphs 1 through 76 above as though set forth fully herein.

78. In response to Paragraph 78 of the FAC, TERiX denies each and every allegation contained in Paragraph 78 of the FAC.

79. In response to Paragraph 79 of the FAC, TERiX denies each and every allegation contained in Paragraph 79 of the FAC.

80. In response to Paragraph 80 of the FAC, TERiX denies each and every allegation contained in Paragraph 80 of the FAC.

A. Cal. Civil Code § 3439.04(a)(1)

81. In response to Paragraph 81 of the FAC, TERiX denies each and every allegation contained in Paragraph 81 of the FAC.

82. In response to Paragraph 82 of the FAC, TERiX denies each and every allegation contained in Paragraph 82 of the FAC.

B. Cal Civil Code § 3439.04(a)(2)

83. In response to Paragraph 83 of the FAC, TERiX denies each and every allegation contained in Paragraph 83 of the FAC.

84. In response to Paragraph 84 of the FAC, TERiX denies each and every allegation contained in Paragraph 84 of the FAC.

C. Cal Civil Code § 3439.05

85. In response to Paragraph 85 of the FAC, TERiX denies each and every allegation contained in Paragraph 85 of the FAC.

D. Remedies

86. In response to Paragraph 86 of the FAC, TERiX denies each and every allegation contained in Paragraph 86 of the FAC.

87. In response to Paragraph 87 of the FAC, TERiX denies each and every allegation contained in Paragraph 87 of the FAC.

PRAYER FOR RELIEF

TERiX admits that Oracle is requesting the specified relief, but denies that Oracle is entitled to the specified relief or any other relief.

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1 **AFFIRMATIVE DEFENSES**

2 TERiX alleges the following affirmative defenses and reserves the right to assert
3 additional affirmative defenses as appropriate.

4 **First Affirmative Defense**

5 Oracle's claim under the California Uniform Voidable Transactions Act is barred against
6 TERiX on the ground that TERiX is not a person for whose benefit the alleged voidable transfer
7 was made under California Civil Code section 3439.08(b).

8 **Second Affirmative Defense**

9 Oracle's claim under the California Uniform Voidable Transactions Act is barred against
10 TERiX under the doctrine of unclean hands.

11 **Third Affirmative Defense**

12 Oracle's claim under the California Uniform Voidable Transactions Act is barred against
13 TERiX under the doctrine of laches.

14 **Fourth Affirmative Defense**

15 Oracle's claim under the California Uniform Voidable Transactions Act is barred against
16 TERiX under the doctrine of waiver.

17 **Fifth Affirmative Defense**

18 Oracle's claim under the California Uniform Voidable Transactions Act is barred against
19 TERiX under the doctrine of equitable estoppel.

20 **Sixth Affirmative Defense**

21 Oracle's claim under the California Uniform Voidable Transactions Act is barred against
22 TERiX under the doctrine of accord and satisfaction.

23 **Seventh Affirmative Defense**

24 Oracle's claim under the California Uniform Voidable Transactions Act is barred against
25 TERiX to the extent that Oracle failed to take reasonable action to mitigate the alleged injuries,
26 damages, and/or losses alleged in the FAC.

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1 **Eighth Affirmative Defense**

2 Oracle's claim under the California Uniform Voidable Transactions Act is barred against
3 TERiX because Oracle's alleged injuries, losses, and/or damages were caused by the superseding
4 and intervening acts, omissions, negligence or other tortious conduct of parties other than TERiX
5 including, but not limited to Sherwood Partners, Inc. and TERiX (assignment for the benefit of
6 creditors) LLC.

7 **Ninth Affirmative Defense**

8 Oracle's claim under the California Uniform Voidable Transactions Act is barred against
9 TERiX due to Oracle's failure to join Sherwood Partners, Inc. as an indispensable party.

10 **PRAYER**

11 Wherefore, TERiX prays as follows:

- 12 1. That Oracle take nothing by the FAC and that the FAC be dismissed with
13 prejudice.
- 14 2. That TERiX be awarded its reasonable attorneys' fees.
- 15 3. That TERiX be awarded its costs of suit.
- 16 4. That TERiX be granted such other and further relief as the Court determines is just
17 and proper.

18 **JURY DEMAND**

19 TERiX demands a jury trial on all issues so triable.

20
21 Dated: October 6, 2016

Respectfully submitted,

22 HOPKINS & CARLEY
A Law Corporation

23
24 By: /s/ Monique D. Jewett-Brewster

25 John V. Picone III
26 Jennifer S. Coleman
27 Monique D. Jewett-Brewster
Attorneys for Defendant
TERIX COMPUTER COMPANY, INC.